

Serial No.:10/594,942

Inventor(s): Omdoll et al.

Title: *Chilling Utensil and Method of Use*

Docket No.: 1414.093

REMARKS

Claims 1-3, 6-10, 13-15, and 18-21 are pending. Claims 7, 15, and 21 have been withdrawn from consideration as being directed to a non-elected invention. Claims 1-3, 6, and 19 have been objected to because of informalities.

Applicant has amended claims 1 and 19 to address the typographical errors noted by the Examiner.

Claims 1-3, 6, 8-10, 13, 14 and 18-20 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Vinarsky (U.S. Pat. No. 5,597,087) in view of Yurkewicz et al. (U.S. Pat. No. 5,975,369). Vinarsky discloses a sports bottle having an angled opening, which according to the reference allows for “nearly complete bottle filling with the bottle tilted, such as when filling from a drinking fountain with low water jet.” Abstract. The bottle is described as having a hook for hanging and a straw (outlet means 27) extending through the cap for the angled opening, “which allows someone (not shown) to take liquid directly from the bottle 10 and into the mouth without removing the cap or spilling, even while exercising.” Col. 3, ll. 4-8. As noted by the Examiner, Vinarsky fails to teach a cover that is adapted to close the mouth such that liquid may only be removed from the hollow interior of the body when the cover is disengaged from the mouth. As such, the Examiner further relied upon the disclosure of Yurkewicz et al. and has suggested that it would have been obvious to one skilled in the art at the time the invention was made to have modified the device of Vinarsky to include the container cover as taught by Yurkewicz et al. in order to prevent a user from spilling liquid out of the bottle.

Yurkewicz et al. teaches a container closure that includes a shell attachable to a container opening thereof. The shell has a shell opening in fluid communication with the interior volume of the container. A tip is placed on the shell and is movable between an open position and a closed position. When the tip is in an open position, fluid may be passed from the interior volume through the shell opening and ultimately through the tip. When the tip is in the closed position, fluid is prevented from passing through the tip. The reference further teaches a dust cover that may be attached to the shell when the tip is in the closed position. One skilled in the art will appreciate that the cover cannot be attached to the shell when the tip is in the open position. More particularly, as shown in Fig. 9c of the reference, for the cover (16) to engage the shell (12), the tip (14) must be in the retracted (closed) position. The extended (open) position can be seen in Fig. 9a. In this regard, the cover does not have an interior volume that is fluidly coupled to the interior of the container. In other words, the cover can only be engaged with the shell when the tip is in the retracted and

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closed position, and when the tip is in such a retracted position, fluid may not escape from the interior volume of the container through the tip and into the interior volume of the cover. It will thus be appreciated, in contrast to that recited in claim 1, for example, the combination of the cover and the container body described by Yurkewicz et al. fails to permit limited expansion of liquid contained in the body into the cover. Accordingly, Yurkewicz et al. fails to teach to a cover as recited in the claims.

Additionally, to the extent that the Examiner is asserting that it would have been obvious to simply add a container cover to the bottle of Vinarsky, Applicant notes that the addition of such a cover fails to provide a cover that is adapted to close the mouth of a container in a manner that is fluidly coupled with the interior of the container. Vinarsky teaches a cover for a sports bottle having a straw extending through the cover. A cap is provided to close the exposed end of the straw, as best shown in Fig. 1 of the reference. Thus, simply adding a dust cover, as taught by Yurkewicz et al., would result in a cover that attaches to the sports bottle in a manner that encloses the capped straw within the cover in a manner similar to the enclosing of the tip within the cover as taught explicitly by Yurkewicz et al. As Yurkewicz et al. teaches that the tip must be in a closed position when the cover is engaged with the shell, one skilled in the art would recognize that the straw must be capped when the cover is engaged with the Vinarsky sports bottle. That is, Yurkewicz et al. explicitly teaches the cover, not as a fluid flow prevention device, but as a protective cover for the tip of the shell. Thus, one skilled in the art modifying the Vinarsky bottle to include a cover as described by Yurkewicz et al. would recognize the functionality of the Yurkewicz et al. cover as not performing fluid retention, but rather, performing as a protective cover for those components of the bottle that do allow or prevent the passing of fluid, i.e., the straw and its cap. Moreover, one skilled in the art would recognize that using the cover instead of the straw cap to close the straw could result in the cover retaining the fluid that would undesirably spill out of the cover was removed, such as by a user seeking to drink from the sports bottle.

Additionally, the Examiner suggests that one skilled in the art would have been motivated to add a cover to the sports bottle of Vinarsky to prevent a user from spilling liquid out of the bottle. As described above, Vinarsky already teaches a cap for the straw for that very purpose. Thus, one skilled in the art would not have been motivated in the manner suggested by the Examiner. That is, one skilled in the art would have recognized that the sports bottle of Vinarsky, like that of Yurkewicz et al., already included means to prevent spillage of liquid from the bottle and would not have modified it further to accomplish the same purpose.

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Even assuming one skilled in the art would have been motivated, or found it obvious, to modify the sports bottle of Vinarsky to include the cover described by Yurkewicz et al., the resulting modification would fail to provide a cover that closes the mouth of a body and is fluidly coupled to the interior volume of the body such that fluid may only be removed from within the interior volume of the body when the cover is disengaged from the mouth.

As such, the claims are believed to define the invention in a manner that is neither taught nor suggested by the art of record. Therefore, it is believed that claims 1-3, 6-10, 13-15, and 18-21 are in condition for allowance. A Notice of Allowance for claims 1-3, 6-10, 13-15, and 18-21 is therefore requested.

Applicant believes that there are no fees due in connection with this communication. Nevertheless, authorization is given to charge any additional fees or credit any overpayment in connection with this or any future communication to the Deposit Account No. 50-1170. The Examiner is invited to contact the undersigned by telephone if it would help to expedite matters.

Respectfully submitted,

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